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FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

Nos. 403, 404.

GEORGE ASHWANDER, ET AL.,
Petitioners,

v.

TENNESSEE VALLEY AUTHORITY, ET AL.,
Respondents.

NOTICE OF MOTION FOR LEAVE TO JOIN IN BRIEF OF TALLAPOOSA COUNTY, ALABAMA, AS AMICUS CURIAE

Notice is hereby given that the undersigned as counsel for Elmore County, Alabama, in the State of Alabama, will on the call of this case on the 19th day of December, 1935, or as soon thereafter as they may be heard, present its motion for leave to join in the brief of Tallapoosa County, Alabama, as amicus curiae.

J. M. HOLLEY,
As County Attorney of Elmore County, Alabama.

To:

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Respondents.

PETITION OF ELMORE COUNTY, ALABAMA, FOR LEAVE TO JOIN IN BRIEF OF TALLAPOOSA COUNTY, ALABAMA, AS AMICUS CURIAE

The undersigned, county attorney for Elmore County, Alabama, respectfully moves this Honorable Court to grant leave to join in the brief as *amicus curiae*, leave to file which has been requested on behalf of Tallapoosa County, Alabama.

Petitioner respectfully states that Elmore County, in the State of Alabama, is in substantially the same position as Tallapoosa County and has a like interest in the questions presented by this record.

The County of Elmore is, like the County of Tallapoosa, a rural county, containing no metropolitan area.

There have been established in Elmore County, as in the other rural counties of Alabama, a diversity of manufacturing plants as a result of the state-wide equality of electric power rates in effect throughout the

State by Alabama Power Company. There are also located within Elmore and Tallapoosa Counties three of the important hydro-electric power dams owned and operated by Alabama Power Company on the Tallapoosa River, a non-navigable stream; and in addition, one other power dam on the Coosa River, a navigable stream, is located wholly within said County of Elmore; from which power developments the County of Elmore realizes more than $326,000 in tax revenue annually. The total installed capacity of the four hydro electric plants is 231,000 kw. (401,000 hp.).

In addition to the above amount of direct revenue realized by Elmore County from the properties of Alabama Power Company in the county, the Alabama Power Company is subjected to a privilege tax on the generation of hydro-electric power at its plants in Alabama under Section 2-(d) of the Revenue Act of 1927 (General Acts of Alabama of 1927, p. 141), as well as other ad valorem, excise and franchise taxes, which, for the present fiscal year, will amount to $2,250,000, from which Elmore County derives indispensable support for its schools and other governmental functions. The amount of the hydro-electric generating tax alone for the year ending September 30, 1935, which was paid to the State by Alabama Power Company, was $330,514.65.

The hydro-electric generating plant of Alabama Power Company wholly within Elmore County is constructed upon said Coosa River, a navigable stream, under license from the Federal Power Commission on the site formerly known as Lock 18 on the Coosa River, and is now known as the Jordan Dam.

If in accordance with the program of the Tennessee Valley Authority shown on this record, and under the

theory urged by it and sustained by the Circuit Court of Appeals, this hydro electric plant can be subjected by the government to commercial electric, tax free, discriminatory federal utility service, Elmore County will sustain permanent and irreparable injury.

For these reasons, Elmore County adopts and joins in urging upon this Court the considerations advanced in the brief of Tallapoosa County, Alabama, as *amicus curiae.*

Respectfully submitted,

J. M. HOLLEY,

As County Attorney and of Counsel for Elmore County, Alabama.